

JF

No. C 05-2443 RMW (PR)

ORDER DENYING
PLAINTIFF'S MOTION
FOR SERVICE WITHOUT
PREJUDICE; DENYING
MOTION FOR
APPOINTMENT OF
COUNSEL WITHOUT
PREJUDICE;
INSTRUCTIONS TO
CLERK

(Docket Nos. 17, 18)

(Docket Nos. 17, 18)

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Order Denying Plaintiff's Motion for Service Without Prejudice; Denying Motion for Appointment of Counsel Without Prejudice; Instructions to Clerk
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of counsel. The Court will instruct the Clerk to copy the amended complaint on behalf of dismissed Plaintiff Jorge Aranda (docket no. 15) and open a new civil rights action pursuant to 42 U.S.C. § 1983. The Court will DENY Plaintiff's motion for service (docket no. 17) and motion for appointment of counsel (docket no. 18) without prejudice.

DISCUSSION

A. Amended Complaints and Motion for Service

Plaintiff Stearns has filed an amended complaint on behalf of himself and a motion for service. Plaintiff Stearns also filed an amended complaint on behalf of dismissed Plaintiff Jorge Aranda. In its initial order, the Court dismissed all Plaintiffs, except Plaintiff Stearns, because this action cannot proceed as a class action. Pro se prisoner plaintiffs are not adequate class representatives able to fairly represent and adequately protect the interests of the class. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975); see also Russell v. United States, 308 F.2d 78, 79 (9th Cir. 1962) ("a litigant appearing in propria persona has no authority to represent anyone other than himself"), so class certification may be denied on that basis, see Griffin v. Smith, 493 F. Supp. 129, 131 (W.D.N.Y. 1980) (denying class certification on basis that pro se prisoner cannot adequately represent class).

Accordingly, dismissed Plaintiff Aranda's amended complaint (docket no. 15) should be filed as a new civil rights action pursuant to 42 U.S.C. § 1983. The Clerk shall copy the amended complaint (docket no. 15) and open a new civil action with Plaintiff Jorge Aranda as the sole named Plaintiff. The Court will review Plaintiff Stearns's amended complaint in a separate written order. Plaintiff's motion for service (docket no. 17) is DENIED without prejudice in order for the Court to review the amended complaint pursuant to 28 U.S.C. § 1915.

B. Motion for Appointment of Counsel

Plaintiff Stearns filed a motion for appointment of counsel. Plaintiff contends that appointment of counsel is necessary because he is indigent, he cannot afford to hire counsel and the issues involved are complex. Plaintiff maintains that he has limited

1 knowledge of the law, he is housed in administrative segregation (“SHU”) and has limited
2 access to the law library. See Plaintiff’s Mot. at 1-2.

3 However, there is no constitutional right to counsel in a civil case. Lassiter v.
4 Dep’t of Social Services, 452 U.S. 18, 25 (1981). 28 U.S.C. § 1915 confers on a district
5 court only the power to “request” that counsel represent a litigant who is proceeding in
6 forma pauperis. 28 U.S.C. § 1915(e)(1). This does not give the courts the power to make
7 “coercive appointments of counsel.” Mallard v. United States Dist. Court, 490 U.S. 296,
8 310 (1989).

9 The court may ask counsel to represent an indigent litigant under § 1915 only in
10 “exceptional circumstances,” the determination of which requires an evaluation of both
11 (1) the likelihood of success on the merits and (2) the ability of the plaintiff to articulate
12 his claims pro se in light of the complexity of the legal issues involved. See Rand v.
13 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997); Terrell v. Brewer, 935 F.2d 1015, 1017
14 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of
15 these factors must be viewed together before reaching a decision on a request for counsel
16 under § 1915. See id. Neither the need for discovery, nor the fact that the pro se litigant
17 would be better served with the assistance of counsel, necessarily qualify the issues
18 involved as complex. See Rand, 113 F.3d at 1525 (where plaintiff’s pursuit of discovery
19 was comprehensive and focused and his papers were generally articulate and organized,
20 district court did not abuse discretion in denying request for counsel).

21 As the Court has not reviewed the merits of Plaintiff’s amended complaint to
22 determine whether the claims are cognizable under 28 U.S.C. § 1915, the Court concludes
23 that appointment of counsel is not necessary at this time. Accordingly, Plaintiff’s motion
24 for appointment of counsel (docket no. 18) is DENIED without prejudice.

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CONCLUSION

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2 1. The Clerk shall copy dismissed Plaintiff Aranda's amended complaint
3 (docket no. 15) and open a new civil action with Plaintiff Jorge Aranda as the sole named
4 Plaintiff. The Court will review Plaintiff Stearns's amended complaint in a separate
5 written order.

6 2. Plaintiff's motion for service (docket no. 17) is DENIED without prejudice
7 in order for the Court to review the amended complaint pursuant to 28 U.S.C. § 1915.

8 3. Plaintiff's motion for appointment of counsel (docket no. 18) is DENIED
9 without prejudice.

10 4. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
11 Court informed of any change of address by filing a separate paper with the Clerk headed
12 "Notice of Change of Address." He must comply with the Court's orders in a timely
13 fashion or ask for an extension of time to do so. Failure to comply may result in the
14 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b)

15 IT IS SO ORDERED.

16 DATED: 3/14/07


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Scott Stearns
3 J-61801
4 Pelican Bay State Prison
5 P.O. Box 7500
6 Crescent City, CA 95531

7 Jorge Aranda
8 E-68278
9 Pelican Bay State Prison
10 P.O. Box 7500
11 Crescent City, CA 95531
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